



# TOWN OF GREENWICH

Town Hall, 101 Field Point Road, Greenwich CT 06830

## Board of Ethics

Peter Tesei, 1<sup>st</sup> Selectman, Ex Officio Member

Paul A. deBary, Chairman

Jane A. Finn, Secretary

Robert F. Grele, Member

Louis Pittocco, Member

## Annual Report of the Board of Ethics

### Fiscal Year 2008-2009

Pursuant to Section 2.12 (c) of the Greenwich Code of Ethics (the “Code”), the Board of Ethics is required to prepare and submit an annual report of its activities to the Board of Selectmen and the Representative Town Meeting. The Board is pleased to submit the following report for the fiscal year ending June 30, 2009.

### Executive Summary

In the 2008-2009 Fiscal Year, the Board continued several initiatives to improve awareness and understanding of the Code of Ethics by Town employees, elected and appointed officials and members of the general public. These included the adoption of a new Ethics Disclosure Form and the development of a template for slide presentations to be used in training. Using materials drawn from this template, members of the Board made a presentation to the heads of the various Town entities at their annual retreat. With the assistance of the Selectmen’s Office, the new disclosure form was provided to these agency heads with a request that it be forwarded on to the individual members and employees of their respective boards, commissions and agencies. We believe that these efforts did increase the number of persons reporting, as well as the quality of the reporting. However, a review of the filings suggests that further training and possible additional revisions in the disclosure form would be appropriate.

The Board was also pleased to receive an appropriation of funds to support its continued operations. Although the amount was not as much as the Board had requested, the Board was pleased with the response considering the exigencies of a difficult budget period. The funds allocated were used to secure an upgrade to the Board’s hotline system. This communications system is independent of the Town’s phone system and provides an 800 number with a virtual switchboard, where persons can leave messages on the hotline, be connected directly to the various members of the Board or leave messages

in their individual voicemail boxes. The new number is (888) 432-2777 and has been posted on the Town Website.

We are pleased to report that there were no complaints concerning a violation of the Code filed with the Board of Ethics during the 2008-2009 Fiscal Year. There were four requests for advisory opinions during the fiscal year, two of which involved the disclosure of spousal interests in the annual financial disclosure form. The other two requests involved the ability of Town Officers with interests in various matters to participate in discussions and votes of those matters. One of these last two requests asked for guidance on participation in matters within the RTM and its committees that might affect a teacher whose spouse was an RTM member. The other requested advice on participation in deliberations of a Town Commission which might affect the personal and business interests of a member of the Commission. In responding to these two requests, the Board attempted to provide clearer guidance as to how such matters should be dealt with by establishing safe harbor procedures that could be used to insulate the proceedings from the appearance of a conflict. The Board's reports summarizing the opinions rendered in these situations are attached to this Annual Report as provided for in Section 2(12) of the Code.

After reviewing its operations during the 2007-2008 Fiscal Year, the Board has made recommendations in three areas: 1) implementing enhancements to the Ethics Hotline, 2) consideration of enhanced reporting by key officers and employees, and 3) the implementation of additional ethics training, particularly as to the requirements of the Code with respect to annual disclosure filings.

## **Complaints of Violations of the Code**

Although we received no complains of violations of the Code during the 2007-2008 Fiscal Year, the Board did receive an anonymous submission that objected to the circulation of information concerning the Town's master plan to members of the RTM by the Town Planner. The substance of the objection appeared to be that the use of Town funds was inappropriate because the RTM members were already aware of the information that was being provided to them. The Board reviewed the submission to determine whether it contained allegations that could serve as the basis for a complaint of a violation of the Code. For this purpose, the Board, without further investigation, assumed that all the allegations made in the submission were credible. However, after carefully considering these allegations, the Board could not find any basis for treating the submission as a complaint of a violation of the Code.

As described elsewhere in this report, the Board has been active in efforts to increase awareness of both the requirements of the Code and the procedures for filing complaints. Due to the high level of cooperation and support that the Board has experienced in connection with these efforts, we are inclined to believe that the lack of complaints is indicative of a high level of ethical behavior in Town Government.

## **Annual Disclosure Statements**

Requirements of the Code. Section 2.9 of the Code requires Town Officers to file disclosure statements if they have a substantial financial interest in any transaction with the Town totaling \$100 or more. Where an officer has such an interest, the annual disclosure statement is required to:

- be filed within the 30 days following the end of the Fiscal Year
- be filed with the Town Clerk
- be filed on the form prescribed by the Board of Ethics
- be signed under oath
- disclose the position of the filer as a Town Officer
- state the nature of the interest
- state the total amount received from the transaction

The Code does not require that a reminder of these requirements be sent to all Town Officers. However, for many years it has been the practice to send a reminder, signed by the Chairman of the Board of Ethics, to all Town employees and to members of the RTM. This year an effort was also made to send the reminder to the heads of various boards, commissions, agencies, consultants and some other elected officials who fall within the broad definition of Town Officer under the Code and to ask them to pass it on to the Town Officers that they work with.

Compliance. Since Town Officers are only required to file a statement when they have had an interest in a Town transaction, there is no way to know (without independently receiving specific information) whether a the failure of a Town Officer to file a statement reflects a failure to comply with the Code or is merely due to the absence of any substantial interest in a Town transaction on the part of the Town Officer. Therefore, the process of reviewing the statements that are filed does not permit the Board to judge the degree of compliance with the Town's financial disclosure policy with any degree of certainty. If the filing of these statements is considered a key control process of the Town, it may at some point be useful for the Town to conduct a more detailed survey of a representative sample of Town Officers in order to better assess compliance. This assessment could then be used as a basis for determining whether the existing system is successful or should be modified in some way.

The Board's review of the annual disclosure statements that were filed with the Town Clerk this year shows a very low percentage of Town Officers reporting interests in transactions with the Town, and those interests that were reported were for the most part insubstantial. Of the 39 forms filed with the Town Clerk, 20 were anomalous as they contained no information concerning financial interests. Of the remaining 19, only 14

were fully compliant with the Code, since the others contained various errors, including the failure to include attachments or provide other required information. This year, a far higher percentage of forms complied with the requirements of the Code than in recent years. However, the review suggests that, despite efforts to improve the instructions provided with the form, additional training would be useful to ensure that all persons who file are aware of how to complete the required form.

The following chart summarizes the results of a review of the disclosure forms filed for the 2008-2009 fiscal year as of August 28, 2009:

	<b>RTM</b>	<b>Town Employee</b>	<b>Other</b>	<b>Total</b>
<b>Nothing to Declare</b>				
Timely, Notarized	12	4	2	18
Signed, Not Notarized	1			1
Unsigned, Not Notarized	1			<u>1</u>
				<b>20</b>
<b>Something to Declare</b>				
Timely, Compliant	9	3	2	14
Timely, Non-compliant	3	0	2	<u>5</u>
				<b>19</b>

Although the 39 Disclosure Statements filed with the Town Clerk for the 2008-2009 Fiscal Year was a reduction from 48 in the previous year, the decline was entirely related to a decrease (from 30 to 20) in the number of apparently unnecessary filings where the filer indicated that he or she had no interest to declare. Thus the reduction in the number of forms filed can actually be seen as the result of an improved understanding of the requirements of the Code, rather than a decrease in compliance.

The new forms used for the 2008-2009 Fiscal Year clarified that a separate form should be used for each interest reported, resulting in three persons who submitted more than one form. Thus, while the number of forms filed that were judged fully complaint increased from 6 to 14, the number of fully compliant reporting persons only increased from six to seven. The most common of the various anomalies contained in the remainder of the filings was that they failed to disclose the actual amount involved in the contract. While some of those who filed made notations to the effect that they had “no knowledge” of the amount at issue, it was not readily apparent why those persons could not have obtained the required information with a minimum of effort.

*The Issue of Mandatory Filings.* As noted in our last annual report, the filing of statements that show nothing to declare may be an expression of more than just excessive zeal and may be considered of particular significance due to the positions of the persons filing these reports. Over 50% of these reports were filed by members of the RTM, including a number of District Chairs. Among the remainder of these reports, many were filed by persons with particular responsibility for financial matters or who have involvement in the ethics disclosure process. By filing forms that show nothing to declare

these individuals may be suggesting that they feel that a mandatory filing system should be implemented.

As noted above, the Code of Ethics currently requires reporting on an exceptions only basis. By not asking all Town Officers to file a report whether or not they have something to disclose, the Town avoids being buried by a blizzard of paper that contains no significant information. However, by using an exceptions reporting system, the Town cannot be sure that all Town Officers are aware of the requirements. In addition, a Town Officer who neglects to disclose an interest can only be held accountable for failing to file a form. If all Town Officers were required to file even where they had no interest, they could be held accountable for making a false statement under oath if they filed a report that falsely represented that they had nothing to declare.

As discussed in our 2007-2008 Annual Report, there are substantial burdens associated with a system that requires all Town Officers to report on an annual basis. However, advances in technology may provide the Town with the opportunity to adopt a more robust reporting system without an overwhelming burden being placed on the Board or the Town's administrative officers. There are still unique aspects of the Town's structure of government as compared to financial institutions and other public organizations, however, which suggest that the types of systems that might be adopted by these organizations would not be suitable for all (or any) Town Officers in Greenwich. In particular, given the large number of elected officials involved with the RTM and the substantial participation of highly qualified volunteers in Greenwich's various boards and commissions, care must be taken that the burdens of any reporting system do not outweigh its benefits. This is particularly true in the absence of any substantial indication that there is a significant lack of ethical behavior in Town government.

As stated in our 2007-2008 Annual Report, the Board feels that the current reporting system could be enhanced by requiring certain officials to complete confidential questionnaires and integrating this process with the filings required under the Code. However, the Board does not believe that this level of detail is appropriate to be required of most Town Officers, nor does it believe that such detailed reports should be filed publicly.

## **Requests for Advisory Opinions**

We received four requests for Advisory Opinions. Reports summarizing the issues raised in the requests, the relevant facts, the conclusions of the Board and the reasons for the Board's conclusions are attached to this report.

In addition, members of the Board and the Board as a whole provided informal guidance to various Town Officers who requested such assistance.

## Other Activities

*Proposed Changes to Code of Ethics.* During the 2008-2009 Fiscal Year, the League of Women Voters completed a multi-year ethics study in Greenwich and adopted a Statement on Ethics after it held a series of meetings to solicit comments. A meeting was also held with the Board. The members of the Board did not feel it was appropriate for the Board to officially endorse proposals to expand the scope or change the requirements of the Code, preferring to limit its role to carrying out the requirements of the Code as it may be adopted by the RTM from time to time. However, the Board met with representatives of the League to allow the individual members of the Board to share their personal concerns as to the technical issues that might arise in the course of implementing the League's recommendations. In particular, the members of the Board indicated that it might be more feasible to ask Town Officers to file disclosure statements at the point that they discover that they have an interest in a transaction or proposed transaction, rather than having to wait to report until after the end of the Fiscal Year. We believe that this dialog was constructive both for the Board members and the representatives of the League.

*Budgetary Authorization.* During the 2008-2009 Fiscal Year, the Board also received its first allocation for funds under the Town's budget. The \$1,500 authorized for the 2009-2010 Fiscal Year will not allow the Board to implement all of the program goals contained in the Board's original request. However, the Board understands the current constraints on the budget and has been able to use the funds provided to implement an upgrade in our hotline capabilities that we believe will assist Town Officers and members of the general public in their communications with the Board. In the future, the Board expects to reapply for funding to support its outreach and training efforts, as well as to provide funds for contingencies that may arise.

*Implementation of Ethics Hotline.* The 2008-2009 Fiscal Year marked the first year in which the Board maintained an ethics hotline throughout the entire year. We have received a number of communications using the hotline system and believe that it has played a useful role in the Board's activities. With the availability of budgeted funds, we have implemented an upgrade to the hotline system that includes a customized message and virtual switchboard to facilitate better communications with Town Officers and members of the general public. The hotline is independent of the Town's telephone system and automatically forwards voice mail and fax messages to all members of the Board simultaneously when received.

*Coordination with Town Departments.* In the 2008-2009 Fiscal Year, the Board continued to work with Joan Sullivan, the Town's Purchasing Manager, and the Department of Law to implement changes to the procedures used by the Purchasing Department in connection with Town contracts. The Board felt that it was important that there be consequences for contractors who attempted to encourage, or succeeded in inducing, Town Officers to violate the Code. Mechanisms were considered that could

better ensure a high degree of ethical behavior on the part of bidders and contractors. After review by the Department of Law and other affected entities, changes were implemented in the Town's Purchasing Policy Manual and bid form. The Board believes that these changes will make Town Contractors more aware of the provisions of the Code and discourage them from soliciting or inducing violations of the Code. In addition to the support of Ms. Sullivan, the Board appreciated the efforts of Aamina Ahmad, of the Department of Law, Larry Simons of the Board of Estimate and Taxation, and the members of the Board of Selectmen, whose involvement and support were instrumental in implementing these important changes.

During the 2008-2009 Fiscal Year, the Board became concerned about potential confusion over the applicability of the Code of Ethics to various Town employees after an article in the Greenwich Time suggested that the Town's policies with respect to gifts were different for different Town Officers. The Board determined that there were differences between the guidance given to Town employees in various areas. We have attempted to schedule a meeting with the Director of Human Resources to discuss this matter and to discuss the ethics training program for Town employees. Thus far our attempts to arrange for the Director to attend a meeting of the Board or to arrange for a member of the Board to meet with her in her office have been unsuccessful. We intend to make a more concerted effort to attend to this in the 2009-2010 Fiscal Year.

*Enhancements to Annual Disclosure Form.* After reviewing past filings, the Board determined that the level of compliance with the Code's annual disclosure reporting requirements might be enhanced through the implementation of changes in the form to be used for the filings. Promulgation and revision of the form for the Annual Disclosure Statement is a responsibility of the Board under the Code. The new forms include a separate page that provides line by line instructions about how to fill in the form. In addition, the new form is more specific about the information that filers are expected to provide.

*Compilation of Prior Opinions.* With the assistance of several volunteers, the Board has been working to retrieve and organize the records of the Board, including its prior Advisory Opinions. During the 2008-2009 Fiscal Year, the Board was able to retrieve records for all but a few of the years that the Board has been in existence and has been able to prepare reports of the advisory opinions and other major decisions of the Board. The Board is hoping that its future budget allocations will be sufficient to allow these reports to be published in a volume for use by the Board, the Town Attorney, and various department heads and to be made available through local libraries for the use of the general public, as well as Town employees and its elected and appointed officials.

*Board Vacancy.* The Board regrets that one of our members, Heather Parkinson-Webb, has been forced to step down. Following her marriage in early August of 2009, Heather took up residence outside of Greenwich and is no longer in compliance with the provisions of the Code, which require that all members of the Board be Town residents.

We will miss Heather, who made many contributions to the Board, including serving as Secretary of the Board through much of the last two years.

## **Plans and Recommendations.**

*Continuing Initiatives.* During the 2008-2009 Fiscal Year, the Board expects to continue its initiatives in connection with retrieving and organizing its records, meeting with Town managers to discuss ethics issues and informing Town Officers and the community at large about the requirements of the Code. The Board plans to implement further training sessions to assist Town Officers in better understanding the who, why, what, where and when of the disclosure process as well as the ways in which the provisions of the Code affect them generally.

*New Initiatives.* The Board is planning to conduct a review of the ethical guidelines used by various departments and agencies of the Town. The purpose of this review is to determine the degree to which the requirements of the Code are integrated into these guidelines and to identify potential differences between the guidelines and the reasons why these might be appropriate depending on the circumstances. As noted above, we are also hoping to meet with the Director and possibly members of the Department of Human Resources to discuss ethics training and monitoring procedures.

*Recommendations.* Following a review of its activities and experiences in the 2008-2009 Fiscal Year, the Board wishes to make the following recommendations to the Board of Selectmen and the RTM:

1. Continue Making Enhancements to the Town's Ethics Training Programs. The Board feels that its initial effort to educate key Town Officers about the requirements of the Code has met with sufficient success that the effort should be expanded. We are aware that the Town conducts ethics training for certain employees, however, it is not clear to what degree this includes specific training with respect to the requirements of the Code, or, if it does, why it is not more effective. It is hoped that the Board can work together with the Town's various departments and agencies to implement training and monitoring protocols that the departments and agencies can carry forward in house, so as to eventually pass the primary responsibility for ethics training on to the affected departments and agencies themselves, so that there is a high degree of both overall consistency and attention to the different circumstance of each group.
2. Consider Further Disclosures for Key Officials and Employees. The Board believes that mandatory reporting and public filing of extensive forms by all Town Officers is not appropriate. However, it also feels that the completion of detailed disclosure forms by certain key officers and employees of the Town would improve the chances that the requirements



of the Code would be properly adhered to. Such detailed forms should not be publicly filed, but should be retained and reviewed by a limited number of persons on a confidential basis. However, the individuals completing these detailed questionnaires should be reminded that, if they become aware of an interest that is required to be reported by the Code as a result of filling out the form, they should prepare and file a disclosure form with the Town Clerk. In this way, the reports filed with the Town Clerk will continue to be limited to relevant information, but the chances of inadvertent non-compliance will be significantly reduced.

The Board invites comments from Town Officers or members of the general public on both its activities and plans and recommendations. Interested persons may request to address the Board at any of its public meetings or speak to any member of the Board personally by calling (888) 432 2777.

**October 1, 2009**

## **Advisory Opinion No. 09-01**

**Date:** 7/14/08

**Topics:** Disclosure of Financial Interest: Town Employees: Public Schools

**Code Section:** Section 2 (a) (4), Section 5

### **Statement of Facts:**

The spouse of a Town Officer has a teaching position in a public school in Greenwich. It is stipulated that the interest of the Town Officer in the salary is more than nominal. Teachers in the Greenwich Public Schools are employed through the Board of Education. The Board of Education was established pursuant to a resolution of the Representative Town Meeting which was adopted on June 13, 1966, under authority of the Greenwich Home Rule Act, to implement provisions of the Connecticut General Statutes. Members of the Board of Education are independently elected and, under the Connecticut General Statutes, the Board of Education is not considered an agent of the Town. Therefore, it cannot be assumed that in entering into employment contracts with teachers, the Board of Education is acting as an agent of the Town. However, funds for the payment of teachers' salaries generally are provided for in the budget of the Board of Education. This budget is submitted by the Board of Education for inclusion in the annual operating budget of the Town, and is subject to review by the Board of Estimate and Taxation and to approval by the Representative Town Meeting. As a consequence, through the Town's operating budget, teachers' salaries are paid from funds that are appropriated by the Representative Town Meeting and include taxes levied on property in the Town.

### **Questions Presented:**

Is a teacher's employment contract with the Greenwich Public Schools considered a transaction within the meaning of the Code of Ethics?

Is an employee of the Board of Education a Town Officer?

If a spouse is a Town Officer, does the transaction qualify for an exception from the reporting requirement?

### **Discussion and Conclusion:**

*Employment Contract as a Transaction.* The definition of "transaction" in the Code of Ethics includes a contract for the furnishing of services such as a teacher's employment contract with the Greenwich Public Schools. The Code further defines a

substantial financial interest as any interest that is more than nominal and is not common to the interest of other citizens of the Town. Since the compensation received in the transaction in question is more than nominal, and is not common to the citizens of the Town, it creates a substantial financial interest, which the spouse of the teacher has an interest in by virtue of the economic relationship between spouses. Unless eligible for an exception, such an interest is reportable in each year that it exists.

*Teachers as Town Officers:* The financial interest of the Town in the operations of the Board of Education is evident in its budget process. As a result, whether the Board of Education is or is not acting as an agent of the Town in entering into its employment agreements with teachers does not change the status of the teacher as a Town Officer.

*Exception for interest as Town Officer.* An employee of the Town is not required to file a disclosure statement disclosing an interest in his or her employment contract, because the employment contract is the transaction that gives rise to his or her position as a Town Officer. Since a Town employee is required to file a disclosure statement because of being a Town employee, filing a disclosure statement showing an interest in the employment contract with the Town would essentially be stating the obvious. Accordingly, in the instant case, the teacher is not required to file a disclosure statement reporting that the contract with the Board of Education. However, the Board does not consider that the reporting exemption provided for the teacher excuses the teacher's spouse from reporting a substantial financial interest. Since spouses have joint economic interests under federal and State laws, the Code of Ethics treats transactions involving an immediate family member such as a spouse as giving rise to a separate indirect interest of the Town Officer as a reporting person. As this is not an interest resulting from the services of the reporting person as a Town Officer, but rather an indirect interest arising from the legal relationship between the spouses, it is required to be included in the annual disclosure statement. The Town Officer is reporting on the indirect interest in the spouse's employment agreement that arises from the marriage contract and the shared economic interests of spouses. That interest becomes relevant because of the fact that the spouse has a contractual arrangement with the Board of Education that is funded through the Town's operating budget.

**See Related: A-92-02, A-09-03**

## **Advisory Opinion No. 09-02**

**Date:** 7/14/08

**Topics:** Financial Interest: Substantiality

**Code Section:** Section 5

### **Statement of Facts:**

The spouse of a Town Officer has provided part time services to the Department of Parks and Recreation as an instructor for a sports clinic. The spouse also serves as an umpire for the Town baseball league. In each case, there is no formal contract for such services and they are provided as an independent contractor. During the 2007-2008 Fiscal Year, the amount of compensation that the spouse received for services as an instructor for the clinic was approximately \$300, which was paid by the Town. Fees paid for umpiring services during the same period were approximately \$1,500.

It is noted that the Department collects application fees from participants in its clinics and from the teams in its baseball leagues. Applicants and teams are requested to make their fees "payable to the Town of Greenwich". The current team entry fee is \$997, which includes a \$322 umpire rebate check to cover 14 games at \$23 per game per team. The teams pay the umpires at the field. The umpires that officiate at each game are not chosen by the Department however. The League is registered with and operates under guidelines established by the Amateur Softball Association of America (ASA). To be eligible to serve as an umpire for ASA league games an individual must go through the ASA certification process. The Greenwich Umpires Association, rather than the Department of Parks and Recreation, hires and schedules umpires from within the pool of ASA eligible umpires.

In addition to organizing its own programs, the Department also grants permits to various organizations for the use of the Town Parks. Interests related to the use of Town facilities pursuant to such permits are not the subject of this request.

### **Questions Presented:**

Is a spouse's part-time employment by the Department of Parks and Recreation considered a transaction within the meaning of the Code of Ethics?

Is the interest in such a transaction not reportable because the amount of compensation received by the spouse is nominal and, therefore, does not give rise to a substantial financial interest?

Does the transaction in question qualify for an exception from the reporting requirement because the interest it creates arises from services rendered by the spouse as a Town Officer?

### **Discussion and Conclusion:**

The definition of “transaction” in the Code of Ethics includes the furnishing of services. There is no exception for part-time as compared to full-time employment. Rather the Code defines a substantial financial interest as *any* interest that is more than nominal and is not common to the interest of other citizens of the Town. The Code of Ethics does not require that a contract be entered into in order for a reportable interest to occur. Here a course of conduct has been established and the spouse is paid by the Town for being an instructor at the clinics.

The umpiring payments involve a more complex fact pattern. Although payments are made to the umpires by the teams, the Town has directed the teams to make the payments and the Town makes a rebate to the teams that it identifies as an “umpire rebate check” in an amount expected to be equal to or less than the expected umpire payments. (If the rebate check is less than necessary, the teams and their sponsors must make up the difference.) But the Town is not involved with the selection of umpires. Since the umpires are not selected by members of the Department of Parks and Recreation, it is the understanding of the Board that the Town’s involvement with the League is not determinative of either the amount of an umpire’s compensation or the specific choice of umpire for a given game. Thus, the financial interest relating to the umpiring fees is not connected either directly or indirectly to the Town and is not reportable on the annual disclosure statement.

A Town Officer is not required to disclose an interest in the very transaction for services that gives rise to his or her position as Town Officer. Under the Code, a Town Officer includes any official, employee, agent, consultant or member, elected or appointed, of any board, department, commission, committee, legislative body or other agency of the town. In this case, based on the facts as presented to the Board, the spouse’s sole relationship with the Town is as an independent contractor that is not an agent or consultant to the Town. Accordingly, the spouse is not required to report the interest because the spouse is not a Town Officer.

However, since spouses have joint economic interests under federal and State laws, the Code of Ethics treats transactions involving a spouse as giving rise to a separate interest on the part of the Town Officer. The Code of Ethics provides that any Town Officer that has a substantial financial interest in a transaction with the Town during a fiscal year is required to file a written statement disclosing such interest within thirty days of the end of the fiscal year. In this case, if the interest is more than nominal, it would create a substantial financial interest that is required to be reported.

**See Related: A-92-01, 09-01, 09-03**

## **Advisory Opinion No. 09-03**

**Date:** 12/9/08

**Topics:** Conflict of Interest: Exerting Influence: RTM Members: RTM Committees:  
Discussion: Voting

**Code Section:** Section 4

### **Statement of Facts:**

A member of the Representative Town Meeting (RTM) is married to a teacher in the Greenwich Public School system. In Advisory Opinion 09-01, dated July 14, 2008, the Board determined that an RTM member whose spouse is a teacher has a substantial financial interest in the salary of the spouse and is required to file an annual disclosure statement describing the nature of that interest in order to comply with the Code. In the instant request, the RTM Member asks whether such an interest prevents the RTM member from exerting influence or voting on any matters concerning the schools and specifically the Town Budget. As a whole, the RTM votes on the budget submitted by the Board of Education, not separately but as a component of the entire town budget.

The budget of the Board of Education is developed through collaboration between the Board of Education and the First Selectman working under guidelines established by the Board of Estimate and Taxation (BET). At this time, the BET has encouraged the Board of Education to explore all areas of opportunity to reduce their budget and has suggested that the Board of Education focus on the results achieved by the staffing model currently being deployed in other school systems.

In the request for this Advisory Opinion, it was indicated that this RTM member also serves as an alternate member of the RTM's Budget Overview Committee, whose primary task is reviewing and considering various items during the budget preparation process, including matters related to the Board of Education budget. It is expected that such discussions will include changes in the staffing model, such as performance pay for teachers.

**Questions Presented:**

Does the Code of Ethics permit an RTM member who is married to a public school teacher to:

1. Discuss and vote on matters, other than budget items, that affect the Greenwich public schools in general?
2. Vote on the Town budget, which includes funding of the Board of Education?
3. Discuss and vote on specific issues which pertain to the public school budget at RTM meetings and Budget Overview Committee meetings?

**Discussion and Conclusion:**

Section 4 of the Code of Ethics provides that:

“...no town officer having a substantial financial interest in any transaction with the town or in any action to be taken by the town shall use his office to exert his influence or to vote on such transaction or action”

Thus the Code appears to be quite explicit that an RTM member with a substantial financial interest in a matter may not vote on or “exert influence” on the matter either at the larger RTM meetings or at the smaller committee meetings. Previous rulings of the Board of Ethics have, however, suggested that there are circumstances in which an RTM member, after disclosing a substantial financial interest, may enter into discussions by the RTM as a whole, and, in more limited circumstances, even vote on, matters in which they appear to have a substantial personal financial interest.

One of the purposes of Advisory Opinions is to provide guidance to Town Officers facing difficult ethical situations. Ideally, these situations are clearly defined and the Board is able to express an opinion with a high degree of confidence that all the relevant facts have been provided for and can be articulated in the opinion. Far more frequently, however, the need for guidance is greatest when the prospect of a conflict is apparent, but the precise circumstances under which it will appear are less so. Such situations present a difficult challenge for the Board, because it must balance its responsibility to provide guidance to the Town Officer seeking advice against the likelihood that, the more general the factual pattern it considers, the less chance there is that its Opinion will be adequate to properly deal with the underlying issues.

**Background**

One way to provide general guidance while avoiding the difficulties of not having a crystal ball to peer into the future is to draw on the lessons of the past. By searching the

record for previous instances where similar questions have been raised and reviewing the circumstances surrounding them, the Board may be able to provide constructive insights into the present. This is the approach the Board adopted in the Spring of 1990, when a similar situation arose. It is particularly useful to examine this situation because the request for an Advisory Opinion was made toward the end of the budget process.

In Advisory Opinion No. 90-01 a member of the RTM requested an advisory opinion to clarify “how the conflict of interest provision of the Town Ethics Code applies to RTM members who wish to speak on an issue and vote on an issue.” The member had been advised that the Moderator’s Committee had considered the need for such an Advisory Opinion and had reached a consensus that it was not necessary at the time and that most situations could be handled by a speaker simply disclosing the nature of the interest when addressing the RTM. Although not specifically mentioned in the request, the question was raised in advance of an RTM vote on a controversial \$2 million reduction in the Town’s \$144 million budget for FY 1990-91. The proposal included the elimination of 94 Town employee positions and the Board was aware that a number of the members of the RTM or their spouses were Town employees.

The Board responded to the rather general request made in 1990 by summarizing its past opinions with respect to voting and discussions in the RTM, noting that it had previously opined that: 1) an RTM member whose spouse is a paid employee of the Town may not vote on a labor contract for the bargaining unit that represents such spouse, but may vote on a contract for a bargaining unit which does not represent such spouse, 2) an RTM member whose spouse is a paid employee of the Town may participate in discussion by the RTM as a whole concerning a contract in which such spouse has an interest, so long as that interest is fully disclosed prior to the time of such participation, and 3) an RTM member may participate in discussion of and vote on the adoption or rejection of the overall Town budget, but should refrain from discussing or voting on a specific item of the general budget if the spouse has a substantial financial interest in the item in question.

In the following year, the Chairman of the Board also received a letter from a new member of the RTM seeking guidance over when to abstain from RTM votes. The new member listed a number of items that had come before the RTM and indicated the member’s reasons for voting or abstaining on the matters. As a civil engineer, the member had abstained from voting on appointments to various boards and commissions which the member or the member’s firm might be called upon to appear before on behalf of clients. The member also abstained from voting on a matter that involved a condition to an approval by the Planning and Zoning Commission because the member’s firm did surveys and prepared the maps that were being approved by the RTM. On the other hand, the member had voted on changes to Town regulations that could have a future impact on the firm’s clients, as well as on a waiver for a non-client of the firm. Although the Board did not render a formal Advisory Opinion with regard to this request, the Chairman advised the other members of the Board that he had visited with the individual requesting guidance and “advised him that his ethical sensitivity seemed about right”.



Subsequently, in Advisory Opinion No. 96-01, dated August 14, 1995, the Board addressed the question of whether a member of the BET could serve as a member of the Board of a non-profit organization that received funding from the Town. While noting that a specific answer to this question was beyond the province of the Board, the Board indicated that it assumed that the BET member would be allowed to serve on the non-profit board and then noted with approval the fact that the individual had announced the intention to refrain from discussing or voting on matters before the BET that involved the non-profit organization.

Similarly, in Advisory Opinion No. 02-02, dated January 1, 2002, the Board cautioned an RTM member who was serving on a Condemnation Commission that care should be taken to refrain from discussing or voting on actions in which the Commissioner or a family member personally had a direct or indirect financial interest.

Advisory Opinion 89-01, dated November 14, 2007, considered a request by an RTM member who was also a Town employee. The member was a member of the RTM committee that had oversight responsibility for the Department in which the RTM member worked. The position of the RTM member was that the financial interest that created the conflict was the employment contract with the Town, negotiated with the Town by the union bargaining unit, in which the member played no part. In addition, the member urged that giving the committee access to an “insiders view” of the Department was beneficial to the committee. The Board agreed that the committee would benefit from the expertise of the employee and found no objection to the employee serving as a member of the committee. However, the Board cautioned the RTM member that as a member of the committee that had oversight of the department in which the RTM member worked, there were quite likely to be conflicts that presented themselves. The Board indicated that, under the Code, the existence of a conflict did not depend on who negotiated the contract, but on who benefited from it and that the financial interest in the contract extended to the terms and conditions of employment, including the appointment of supervisors who would conduct and review the member’s performance reviews, whose own appointment and performance review would be the subject of the committee’s responsibility, as well as work allocations, promotions of co-workers and, in some cases, major policy initiatives which might affect the inclination of departmental employees to perform well or even resign. The Board noted that service on a committee of the RTM was inherently an influential position relative to the department and cautioned the member that participation in discussions of many matters relating to the department would be likely to be viewed by the Board as a violation of the Code, particularly if the member’s participation appeared to be to influence the outcome, rather than simply inform the other members.

It is important to note that in these previous decisions the Board has been more circumspect in finding violations of the Code with respect to discussions and votes before the RTM as a whole than it has been with respect to discussions and votes in smaller bodies such as the BET or the Condemnation Commission. Thus, while encouraging members of the BET or the Condemnation Commission to refrain from any participation in matters in which they might have a personal financial interest, the Board permitted an

individual to engage in discussion before the RTM as a whole, even though there was a direct financial interest, as long as the interest was disclosed.

### **The Role of the RTM**

In order to understand this apparent inconsistency, it is important to consider the differences between participation in the RTM as a whole and participation in smaller committees, boards or commissions. When the State legislature authorized the creation of the Greenwich Representative Town Meeting in 1934, it vested the body with all of the powers of the citizens of the Town of Greenwich. As a result, the RTM exercises sovereign powers on behalf of the citizens of Greenwich, one aspect of which is the adoption and amendment of the Town Charter, which includes the Code of Ethics. Thus, the Board's authority to render Advisory Opinions derives from the RTM. When dealing with matters unrelated to the internal affairs of the RTM, it has a responsibility to give full weight to the ordinary meaning of the provisions of the Code as they apply to all the activities of Town Officers in the conduct of Town business. Revising and amending the Code of Ethics is not the responsibility of the Board of Ethics. Only the RTM has the power to amend and change the meaning of the Code.

The RTM, however, may revise the Code by direct action or by implication. A proper respect for the sovereignty of the RTM requires the Board to defer to the procedures established by the RTM for the conduct of its internal affairs and to avoid any interference in the manner in which it conducts its business. It is significant that in rendering its opinion in 1990, the Board did not express an opinion on or render an opinion contrary to the positions taken by the Moderator or Moderator's Committee with respect to the conduct of RTM meetings.

It is also important to note that the sovereignty of the RTM derives from its representative nature and that the Board must be mindful of the obligation of a member of the RTM to represent the interests of his or her constituents when interpreting questions concerning the propriety of actions taken by an RTM member during RTM proceedings. It is certainly not unlikely that a member of the RTM would support a position adverse to a personal financial interest because of the sincere belief that it was in the best interests of his or her constituents. Indeed, in voting to approve the overall budget, each member of the RTM is voting on a matter in which they have a personal financial interest. The Code recognizes this when it makes an exception for interests "common to the other citizens of the Town" *See Code Section 2 (a) (2)*.

At the same time, the Code of Ethics is a standard for the personal behavior of Town Officers and deference to the sovereignty of the RTM and the right of the RTM as a whole to govern the conduct of its own affairs does not relieve the individual members of the RTM from the responsibility to comply with the Code. In the absence of an express indication that the RTM has adopted procedures for the conduct of its affairs that mitigate the requirements of the Code, the Board will fully enforce its provisions as they apply to the behavior of members within the RTM to the same extent that the Code would apply to any other activity by a Town officer.

## Discussion and Voting

Within this context, it is possible to understand the distinctions made by the Board with respect to discussions and votes in the RTM in its past Advisory Opinions and to provide some assistance to members of the RTM in determining how or whether to participate in discussion and voting on matters in which they have a potential conflict of interest. While the Board has established no hard and fast rules, it has indicated that there are circumstances where discussion and voting on matters before the RTM is permissible, even where a substantial financial interest might be involved. Conversely, there are situations where the nature of the conflict is readily apparent. Even in the inevitable cases that fall between these two extremes, there should be ways that an RTM member can proceed without risking a finding that the Code of Ethics has been violated. In the context of the current request, where the RTM member has a spouse that is a teacher, we will attempt to address each of these areas.

*Areas of Relative Safety.* There are five circumstances under which an RTM member is clearly unlikely to be guilty of a violation of the Code, even where a real or imagined conflict exists:

1. The first and most obvious of these is where the member takes no part in any discussion or voting with respect to the matter. Absent a showing that the member attempted to influence the voting on a matter in which they have a potential conflict outside the RTM, it is simply impossible to find a violation of the Code for actions taken within the RTM or a committee when an individual is absent from the RTM or the committee when the discussion and voting of a matter occurs.
2. Another obvious situation where no violation of the Code would exist is where the interest giving rise to the conflict is not financial in nature. It is in the nature of the political process that many ideological and personal conflicts exist. The Code wisely confines its proscriptions to conflicts of interest that are financial in nature. In the context of public schools, there are doubtless a number of pedagogical and management issues that might come before the RTM from time to time that do not bear significantly on the terms and conditions of a teacher's employment.
3. A further area in which violations of the Code would not seem likely to occur is where conceptual issues or long term planning items are under consideration whose financial impact on an RTM member or their spouse is not particularly distinct from other members of the community. This would occur where the financial impact on the RTM member is only a minor side effect of a larger policy issue under consideration. So, for example, a major shift in curriculum might result in the need to buy new textbooks and thereby reduce the funds available for teacher salaries, but the impact would likely be so insignificant that it would not rise to the level of a "substantial financial impact". In like manner, the decision to build a new school or renovate an existing one is likely to affect a specific teacher

only eventually and coincidentally, since the main focus is likely to be on providing facilities for students. There should be no hesitation about freely engaging in discussions and votes with respect to such matters in the RTM or in RTM committees.

4. The Board has previously indicated that a vote on the approval or disapproval of the Town budget as a whole is not a violation of the Code even where it includes items in which the individual RTM members have a specific interest. The reason for this is clear. In a vote on the approval or disapproval of the overall budget, the members of the RTM are voting on the implementation of the budget as a whole, which is a matter common to all the citizens of the Town. If the budget is not approved, the general result is that the BET, the Selectmen and the various departments, boards and agencies of Town government, together with the appropriate committees of the RTM, will need to develop a new budget for submission to the RTM at a later date. Within this process of revision the Board would expect individual Town officers to refrain from discussions and votes on matters that involve their personal financial interests. Additionally, in the rare instance where the process of approving a budget were to involve a vote by the entire RTM on a specific line item in which a member has a personal financial interest, the Board has previously made it clear that the member must refrain from discussion and vote on that particular matter.
5. There are other circumstances where discussion of and voting on matters in which a member has a financial interest is permissible, provided that the member has fully and completely disclosed the interest prior to engaging in the discussion or vote. Clearly, one instance in which such discussion is permissible is where the member is advocating a position against that interest.

*Areas of Particular Concern.* Contrasted to these situations are situations in which an RTM member has an evident interest at stake. These would include:

1. Discussion of or voting on a contract that affects the individual or his immediate family as an employee, lessee, owner or manager. As indicated above and in other matters, the Board has always considered it a conflict of interest to engage in discussions of or vote on the contract for one's employment, a transaction between the Town and a business entity in which the member has a significant ownership interest or a transaction with an entity in which a member has a management role, even where the entity is non-profit enterprise and the Board member or officer involved serves without pay. The solvency, survival and efficiency of an organization are financial interests relating to the stewardship of a manager, even if the manager has no personal ownership stake in the organization.
2. Discussion of or voting on the imposition of taxes, assessments or fees that have a particular impact on a member, as compared to most other citizens of the Town.

3. Discussion of or voting on limitations on business activities in which the member is engaged or restrictions that particularly affect property that the member owns to a significantly greater degree than similar property owned by other residents of the Town.

*Areas of Doubt.* More difficult questions arise when an issue under discussion only presents a potential conflict, where the financial implications are vague or where degree to which the matter affects the individual member as compared to other citizens can not be assessed with much certainty. With respect to the current request, for example, one teacher staffing approach that has been proposed recently is performance pay for teachers. If merit pay were adopted, it is uncertain whether the RTM member's spouse's pay might be increased or reduced. The existence of such uncertainties would make it more likely that the member would be evaluating the decision on its general merits and not with respect to any particular personal interest. The need to promote full and open discussion within the RTM will cause the Board to be careful to approach potential violations of the Code carefully. In these instances, the Board will be particularly mindful of the circumstances surrounding any alleged conflict of interest and give the benefit of the doubt to individuals who proceeded in a open and forthright manner.

Where the member is advocating a position favorable to their personal interest, the Board would be more inclined to feel that a violation of the Code has occurred, but in making such determination the Board will give particular deference to the general and specific procedures and practices of the RTM regarding such discussion. Even where such procedures have not been clearly articulated, the Board will not be inclined to find a violation of the Code where the member addressed the issues in a logical and forthright manner and implemented logical steps intended to ensure that their interest was understood by the members of the RTM

### **Safe Harbor**

The Board feels that it will be constructive to provide RTM members with a set of safe harbor guidelines to use in connection with discussions and votes on matters in which they may have a potential conflict of interest. Where a member of the RTM has identified an area of potential conflict in a matter to be discussed by the RTM as a whole, brings the potential conflict to the attention of the Moderator of the RTM, either directly or through their District Chair, and can document that they have both (1) fully and completely disclosed the interest to all the members of the RTM in attendance at the time that the matter was discussed and/or voted on, and (2) followed the general practices of the RTM and the specific instructions of the Moderator in discussing or voting on the matter, the Board will defer to the RTM's prerogative to mediate the applicability of the Code of Ethics to that particular situation<sup>1</sup>.

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<sup>1</sup> Obviously, this is not the only way to avoid a violation of the Code of Ethics. Were the member to be absent from the room during the discussion and vote and refrain from any other effort to influence the outcome, the lack of disclosure would not, in and of itself, result in a violation of the Code.

As we have shown, the Board has been particularly sensitive to the prerogatives of the RTM in making determinations with respect to potential violations of the Code of Ethics in connection with participation in RTM meetings. The examples above show that the Board will pay particular attention to the fact that an RTM member has an obligation to represent constituents both at the larger RTM meetings and at the committee level. One of the unique features of the RTM is that it is comparatively a large legislative body relative to the size of its constituency. With over 200 members, the influence of a particular voice or vote is attenuated and a premium is placed on vigorous participation and the ability to represent divergent views. Consequently, the Board will be loathe to suggest course of behavior that might deprive constituents of representation in the legislative process.

However, the Board has previously recognized that there is a distinction between voting on and discussing matters in which a member has a potential conflict of interest at general RTM meetings and voting on and discussing such matters at the committee level. As noted above, the vote of one individual at the larger RTM meeting is proportionally quite small. Therefore, if a member clearly indicates the existence and nature of their interest in a particular issue and how they might be affected, the rest of the RTM membership could certainly evaluate any views the member might offer and make their own judgment of the merits taking into account the potential conflict. The expression of one's point of view, even if self interested, within the RTM at large is more likely to be informative than influential, assuming that the individual has fully disclosed their interest.

The Board is mindful of the fact that the interest of constituents in being represented is not confined to the role of their representatives within the larger body. Because of the express proscription of the Code of Ethics against "exerting influence" on actions or transactions, however, the Board feels that there needs to be a much stricter scrutiny at the committee level than with respect to the RTM as a whole. As there are many fewer members at committee meetings, each vote proportionally is more influential on the result and participating in discussion of matters in which a member has an interest in the committee setting is fraught with potential peril. A committee member can influence other members with non-verbal cues, some of which they may not even be aware they are giving. A raised eyebrow, an impatient sigh and many other cues are picked up by other committee members during a discussion and may influence how they vote. In addition, the role of a committee is to forward its findings to the larger RTM. It would be difficult to inform the members of the full RTM of the degree of influence that a particular member who had a financial interest in an issue might have had on the outcome of the committee's votes. As a whole, the RTM has the right to rely on unbiased decision-making at the committee level. Therefore, the Board believes that the best way to insure that members with a financial interest do not exert undue influence on committee deliberations is for such members to refrain both from active debate and voting on issues in which they have an interest at the committee level.

There is no reason that this should prevent committee members from stating their opinions on a particular matter to the committee on the same basis as any other member

of the RTM, or the general public might be entitled to, however. If the member discloses the nature and extent of his or her interest in the matter from the outset and is absent from any further discussion of the matter, the Board sees no reason why a committee member could not make an appearance before the committee, state their position with respect to the matter and respond to any questions from the rest of the committee. As with participation in discussion of matters before the general RTM, such a procedure would ensure that the member's constituents would not be unnecessarily deprived of the ability of the member to communicate his or her views on their behalf. Such an appearance before a committee is, after all, the prerogative of any RTM member in the interest of representing their constituents. By contrast, however, participation in extended discussion and debate is clearly more related to influencing the outcome than simply giving the committee the benefit of one's views.

Undoubtedly, the need to absent one or more members of a committee from discussion of a particular item or aspect of an item will be an inconvenience to the members of the committee. In recognition of that, members that anticipate having a conflict of interest with respect to a particular item on the agenda should make an effort to inform the Chair of the committee as soon as possible. The Chair will undoubtedly make every effort to ensure that the member is able to absent themselves at the appropriate time and be able to return to the committee as soon as possible in order to participate fully in all other matters on the agenda.

The Board is aware that the nature of the legislative process is quite dynamic. Therefore, it may not be practical to follow any particular procedure rigidly or avoid all situations in which a possible conflict is present. Members may become aware of a conflict in the middle of, or even after a discussion has occurred. Most of these situations will be able to be resolved without complaint based on the openness and sensitivity of the persons involved in the matter. In this Advisory Opinion, we have attempted to provide members of the RTM with some understanding of the approach that the Board will take in dealing with these matters, as well as safe harbor procedures that can be used to avoid any appearance of a violation of the Code. To the extent that the issues identified in this Opinion are kept in mind, and the suggested procedures followed as appropriate to the circumstances, we are confident that potential violations of the Code of Ethics can be avoided.

**See Related: A-91-01**

## Advisory Opinion No. 09-04

**Date:** February 10, 2009

**Topics:** Boards and Commissions; Planning & Zoning Commission: Substantial Financial Interest: Discussion and Voting

**Code Sections :** Section 4

### **Statement of Facts:**

The Town Officer seeking this advisory opinion has been a member of the Planning & Zoning Commission (the “Commission”) since 2004 and is referred to herein as the “Commissioner”. During most of the Commissioner’s tenure as a member of the Commission, the Commissioner was active in the commercial real estate business in New York and was not active in the Greenwich real estate market. In 2008, however, the Commissioner became a member of the Greenwich Association of Realtors, Inc., and has been active in the sale of homes and properties in Greenwich. In order not to violate the Code of Ethics, the Commissioner has declined to represent persons who are, or are expected to be, involved in matters before the Commission.

Recently, the Commissioner has also become active as a real estate developer in Greenwich. In the request, the Town Officer outlined three projects in the Greenwich area that the Town Officer was active in:

- 1) *Purchase of a two family home as a rental property.* This property has not been the subject of any application before the Commission. The Commissioner indicated that three other members of the Commission owned investment properties in Greenwich and that it was the practice of the Commission that such members refrain from participation in any applications relating to properties that they have an ownership interest in or to abutting properties.
- 2) *Proposed development of a five unit multi-family apartment.* The site for this development has been identified, but has not yet been purchased as due diligence is being conducted. In addition, no application with respect to this project has been submitted to the Commission. However, in the event the project does proceed, the Commissioner has asked both the Chairman of the Commission and the Assistant Town Planner to ensure that no information about the site be routed to the Commissioner. A third party has been engaged to interact with the staff of the Commission, and to process any application before the Commission that may be required. In addition, the seller of the proposed site and members



of the surrounding community were advised of the Commissioner's position as a member of the Commission.

3) *Proposed purchase of a commercial property.* This property is also pending a closing, but has been the subject of an application before the Commission. The Commissioner sought the opinion of the Town Attorney before proceeding with the project and refrained from participation in any matters relating to the application, including leaving the room during discussions of the application.

At a meeting held by the Board to consider the Commissioner's request, the Commissioner appeared and provided the members of the Board with additional information in response to their inquiries. The Commissioner indicated that some questions had been raised concerning his participation on the Commission since becoming active in the local market and that a review of the materials posted by the Board on the Town website had not provided sufficient guidance with respect to procedures to avoid actual or perceived conflicts in connection with participation in applications or other matters in which members of the Commission might have a direct or indirect personal interest.

#### **Questions Presented:**

Do the Commissioner's professional activities conflict with his duties as a member of the Planning & Zoning Commission and preclude him from serving as a member of the Commission?

By disclosing his interest and not participating as a member of the Commission in connection with any matters in which he may have a direct or indirect financial interest, has the Commissioner complied with Section 4 of the Code of Ethics (the "Code")?

#### **Discussion and Conclusion:**

Section 4 of the Code prohibits Town Officers from using their office to exert influence or vote on matters in which they have a substantial financial interest:

"No Town Officer having a substantial interest in any transaction with the town or in any action to be taken by the town shall use his office to exert his influence or to vote on such transaction or action."

In considering various situations in which potential conflicts of interest have been raised, the Board of Ethics has consistently held that the Code does not preclude persons from serving in town government because of potential conflicts of interest. Rather, the Code prohibits a Town Officer from participating in those specific actions or transactions in which the Town Officer has a substantial direct or indirect financial interest. Thus, in Advisory Opinion 01-01, the Board indicated that a resident of public housing was not

barred from service on RTM Committees and encouraged the resident to participate in discussions relating to public housing generally, while disclosing the interest, although not in matters that had a direct impact on the resident personally. Similarly, in Advisory Opinion 04-01, the Board advised Town employees that the conduct of business in a field that employed the same skills that they used as Town employees did not necessarily result in a conflict of interest as long as the work did not involve any matters in which they would participate as Town employees.

The Board has also addressed the issue of whether a Town Officer's employment or other activities would disqualify the Town Officer from serving on a particular board or commission. In Advisory Opinion 96-01, the Board considered whether a director of the Greenwich Emergency Medical Service ("GEMS") could also serve on the Board of Estimate. The Board indicated that service on GEMS did not disqualify the individual from membership in the Board of Estimate, but cautioned that the individual should not participate in matters related to GEMS itself. Similarly, in Advisory Opinion 01-02, the Board found that an executive officer of a non-profit organization that was a major landowner in Town could serve as a member of the Inland Wetlands and Watercourses Agency, although it indicated several situations in which the executive might need to refrain from participation in the proceedings of the Agency.

The Board has not yet directly addressed the specific procedures that might be used by a board or commission to limit the participation of a member in order ensure that undue influence is not being exercised with respect to a matter in which a member has an interest. However, recently, in advisory opinion 09-03, the Board has suggested safe harbor procedures for the use of RTM members in connection with matters in which they may have a direct or indirect financial interest. Similar guidance with respect to the procedure used by boards and commissions generally may also be appropriate.

In each specific situation presented to it, the Board will review the relevant facts and circumstances to determine if a financial interest exists and if a Town Officer's participation in the related Town actions or transactions constituted an attempt to exert influence in violation of the Code of Ethics. In suggesting safe harbor procedures, the Board is not suggesting that any failure to adhere to such procedures will automatically be considered an attempt to exercise undue influence; nor would technical adherence to a particular formula result in a finding that no attempt to exert influence had occurred where the intent and spirit of the Code was being consciously violated. However, as the Commissioner making the instant request has pointed out, it is useful to have a set of guidelines that can be followed, and it is the obligation of the Board to respond to such a request.

The various boards and commissions involved in Town government have different areas of responsibility and operate in a variety of ways. Because of this, the Board will pay particular attention to the procedures that a particular board or commission has adopted for its own governance as well as its longstanding practices in evaluating complaints concerning potential violations of the Code. Similarly, the circumstances of the RTM are not directly analogous to the Town's various boards and commissions, as pointed out in

Advisory Opinion 09-03. However, the Board feels that the general objectives outlined in that opinion can provide guidance with respect to the operation of the Town's boards and commissions and that the procedural controls suggested there with respect to proceedings in committees of the RTM can also be considered relevant to the operation of boards and commissions.

In Advisory Opinion 09-03, we identified a number of situations in which an RTM member would not need to be concerned with potential conflicts. These included situations in which no financial interest existed or where the financial interest of the member was shared by the broader community. The Board also pointed out that a member might speak against the member's own interest because of a belief that the public interest was being better served. These situations are also of general applicability as applied to the actions taken by members and staff of the Town's boards and commissions.

Another area in which the Board indicated there would be no violation of the Code, even if a member has an interest, was where the member with an interest took no part in the matters relating to the action or transaction in which the member had an interest. Since it is not always easy to prove a negative, however, the Board suggested safe harbor procedures that could avoid any suggestion of impropriety in a committee setting. The principles behind these guidelines for RTM committee members may also be considered broadly applicable to the workings of the Town's boards and commissions. Of particular importance is the need for affected individuals to make immediate and effective disclosure of a potential conflict of interest as soon as they become aware of it. This is best done in a written statement for the record that discloses the nature of the conflict in sufficient detail to allow the members of the board or commission and the general public to appreciate the nature and magnitude of the individual's interest and how the Town action or transaction will affect that interest. We also indicated that it was permissible for the member involved to appear at meetings in order to provide basic information concerning the matter and to answer questions, so long as the procedure used in connection with the appearance was the same as that of any other interested party and the member immediately left the proceedings and did not participate in any discussion of the matter.

As to the particular fact situations described in the Commissioner's request for this Advisory Opinion, we do not believe that the mere fact of ownership of investment property in the Town of Greenwich or participation as a broker in sales of homes or other property in the Town disqualifies the Commissioner from serving on the Commission. Obviously, if matters relating to the properties involved are, or are expected to come before the Commission, the Commissioner will need to take appropriate steps to avoid a violation of the Code. The Commissioner appears to be quite aware of this possibility and we commend the Commissioner for declining to serve as a broker with respect to properties with applications before the Commission.

In the other situations described in the request for this Advisory Opinion, the Board believes that the Commissioner would not be in violation of Section 4 of the Code if the

Town Officer appropriately refrains from any involvement with the Commission or its staff in connection with any such transaction, project or property or any application or proceeding pending before the Commission. In determining whether appropriate restraint has been exercised, the Board will be inclined to find that no violation of the Code has occurred as long as the Commissioner (a) appropriately advises the Chairman and other members of the Commission of the nature and extent of the Commissioner's involvement and financial investment in the transaction, property or project which is the subject of proceedings before the Commission; (b) is recused from the matter by avoiding all formal or informal, direct or indirect contact with the members or staff of the Commission in connection with the matter, other than providing basic information as required by the appropriate application forms or responding to requests by the staff or the members of the Commission, which would preferably be submitted and responded to in writing; and (c) is absent from any hearings on the matter or the portion of any meeting of the Commission at which the matter is discussed or voted on.

The Board advised the Commissioner to be sure that, when relevant, a written statement is placed in the records of the Commission. Such statement should indicate the nature and magnitude of any financial interest so that the members and staff of the Commission and the members of the general public will understand why recusal is appropriate. The Commissioner's non-participation in the various proceedings related to the matter should also be clearly indicated in the record. In addition, appropriate notations on the materials circulated to members and on the agendas, minutes and any summary information provided to the Board or the general public are recommended.

The Board understands that it is important to have qualified people on the Town's boards and commissions and that excluding all individuals having a potential conflict would not be in the best interest of the Town. The Board appreciates the fact that the Commissioner has evidenced considerable sensitivity to potential conflicts of interest. By past conduct and by bringing this matter to the Board, the Board believes that the Commissioner has recognized, and will continue to recognize, conflicts that might arise in particular situations and will act in accordance with the guidelines set forth in this Advisory Opinion.

**See Related: 96-01, 01-01, 01-02, 04-01, 09-03**